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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301205-0289-02]

RIN 0648-XA971

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Sub-Annual Catch Limit (ACL) Harvested for Management Area 1B

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that, effective 0001 hr, [Insert date of publication in the Federal Register], federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Management Area 1B per calendar day until January 1, 2013, when the 2013 sub-ACL for Area 1B becomes available, except when transiting as described in this notice. This action is based on the determination that the revised Atlantic herring sub-ACL limit allocated to Area 1B for 2012 has been exceeded as of [Insert date of publication in the Federal Register], 2012.

DATES: Effective 0001 hr local time, [Insert date of publication in the Federal Register], through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, (978) 675-2179.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring (herring) fishery are found at 50 CFR part 648. The regulations require annual specification of the overfishing limit, acceptable biological catch, ACL, optimum yield, domestic harvest and processing, U.S. at-sea processing, border transfer and sub-ACLs for each management area. The 2012 Domestic Annual Harvest was set as 91,200 metric tons (mt); the sub-ACL allocated to Area 1B for the 2012 fishing year (FY) was 4,362 mt and 0 mt of the sub-ACL was set aside for research in the 2010-2012 specifications (75 FR 48874, August 12, 2010). However, due to an over-harvest in Area 1B in 2010, the FY 2012 sub-ACL in Area 1B was revised to 2,723 mt through a final rule published concurrent with this action.

The regulations at § 648.201 require the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the herring fishery in each of the four management areas designated in the Fishery Management Plan (FMP) for the herring fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95-percent of the management area sub-ACL. When such a determination is made, NMFS is required to publish notification in the Federal Register and prohibit herring vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 1B with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other

available information that the revised herring sub-ACL allocated to Area 1B for FY 2012 has been exceeded. As of February 15, 2012, herring harvest in Area 1B was 74-percent of the FY 2012 Area 1B sub-ACL. However, due to an over-harvest in Area 1B in FY 2010, a reduction to the sub-ACL in Area 1B from 4,362 mt to 2,723 mt was implemented in a final rule to adjust the FY 2012 herring ACL published elsewhere in this issue. As of February 15, 2012, herring harvest in Area 1B was 118-percent of the revised 2012 Area 1B sub-ACL. Therefore, this action reducing the herring possession limit in Area 1B is published concurrently with final rule implementing the revised FY 2012 herring sub-ACLs in Area 1B and 1A to minimize any further harvest of herring from Area 1B.

Effective 0001 hr local time, [Insert date of publication in the Federal Register], federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of herring in or from Area 1B per calendar day through December 31, 2012. Vessels transiting Area 1B with more than 2,000 lb (907.2 kg) of herring on board may land this amount, provided such herring was not caught in Area 1B and provided all fishing gear aboard is stowed and not available for immediate use as required by § 648.23(b). Effective [Insert date of publication in the Federal Register], federally permitted dealers are also advised that they may not purchase herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 1B through 2400 hr local time, December 31, 2012.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5

U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This action closes the Atlantic herring fishery for Management Area 1B until January 1, 2013, under current regulations. The regulations at § 648.201(a) require such action to ensure that Atlantic herring vessels do not exceed the 2012 sub-ACL allocated to Area 1B. The Atlantic herring fishery opened for the 2012 fishing year on January 1, 2012. However, due to an over-harvest in Area 1B in FY 2010, a reduction to the sub-ACL in Area 1B from 4,362 mt to 2,723 mt was implemented in a final rule published elsewhere in this issue. As of February 15, 2012, herring harvest in Area 1B was 118-percent of the revised 2012 Area 1B sub-ACL. Therefore, this action reducing the herring possession limit in Area 1B will be published concurrent with a final rule implementing the revised FY 2012 herring sub-ACLs in Area 1B and 1A to minimize any further harvest of herring from Area 1B.

Because herring catch in Area 1B has already exceeded 95 percent of the revised 2012 sub-ACL (2,587 mt), triggering the need to implement a 2,000-lb (907.2-kg) possession limit in that area, if implementation is delayed to solicit prior public comment, then it will likely cause catch to further exceed the reduced Area 1B sub-ACL. Due to the high volume nature of the herring fishery, and the amount of herring already caught in Area 1B for FY 2012, if implementation of this action is delayed, the reduced FY 2012 sub-ACL for Area 1B could be

exceeded by a large amount. Any delay in this action's effectiveness would therefore, be contrary to the conservation objectives of the MSA and the Herring FMP.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 21, 2012

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James P. Burgess,  
Acting Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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